IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3232 of 2007()

CMP NOS. 1652 & 1653 OF 2007 IN CC.520/2005 of JUDL.MAGISTRATE OF FIRST CLASS, KOYILANDY

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PETITIONER: COMPLAINANT

SAYED MULLAKKOYA THANGAL,
S/O.SAYED AHAMMAD MUHAMMAD BIL-ALHADI
IMBICHAKOYA THANGAL, VALIYAKATH DARGA PALLI,
BEACH ROAD, KOYILANDY, PANTHALAYANI AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: ACCUSED NO.1 TO 10 AND 12 TO 15

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SAYED THAHA HYDROSS THANGAL,
S/O.SAYED HUSSAIN, HYDROSS THANGAL,
WHITE HOUSE, BEACH ROAD, KOYILANDY.

3. SAYED YUSAF HYDROSE THANGAL,
S/O.THAHA HYDROSE THANGAL, WHITE HOUSE,
BEACH ROAD, KOYILANDY.

4. SAYED MUHAMMED HYDROSS THANGAL,
S/O.SAYED ABOOBACKER HYDROSS THANGAL,
MALIYEKKAL, BEACH ROAD, KOYILANDY.

5. SAYED HAMEED HYDROSE THANGAL,
S/O.SAYED ABOOBACKER HYDROSS THANGAL,
MALIYEKKAL, BEACH ROAD, KOYILANDY.

6. SAYED ALI BAFAKI THANGAL,
S/O.SAYED ABDUL KHADER BAFAKI THANGAL,
HILAL MANZIL, MUBARAK ROAD, KOYILANDY.

7. SAYED THAHA BAFAKI THANGAL,
S/O.SAYED ABDUL KHADER BAFAKI THANGAL,
HILAL MANZIL, MUBARAK ROAD, KOYILANDY.

8. SAYED ALAVI BAFAKI THANGAL,
S/O.ATTAKKOYA THANGAL, MARVA,
BEACH ROAD, KOYILANDY.

9. SAYED THAHIR BAFAKI THANGAL,
S/O.V.M.C. ATTAKKOYA THANGAL, PUTHANPURAYIL,
BEACH ROAD, KOYILANDY.

10. V.MUHAMMAD, S/O.KUNHI SOOPI,
SEKHINTAKATH COMPOUND, BEACH ROAD,
KOYILANDY.

11. P.M.POOKKOYA THANGAL,
S/O.SAYED SHEIL BAFAKI, MAIKKA HOUSE,
BEACH ROAD, KOYILANDY.

12. SAYED HUSSAIN BAFAKI THANGAL,
S/O.SAYED UMMAR BAFAKI THANGAL,
NOOR MAHAL, MUBARAK ROAD, KOYILANDY.

13. SAYED ALAVI HYDROSS THANGAL,
S/O.SAYED HYDROSE THANGAL, THOPPIL HOUSE,
BEACH ROAD, KOYILANDY.

14. MUHASSI BARGAYIYA,
S/O.KHALI HAJI BARGAYIYA, KOYYOTTINTAKATH,
MUBARAK ROAD, KOYILANDY.

15. SAYED MUHAMMAD BAFAKI THANGAL,
S/O.SAIDALAVI BAFAKI THANGAL,
DARUSSAIAM, BEACH ROAD, KOYILANDY.
(ACCUSED NO.11 DIED DURING THE PENDENCY OF THE PROCEEDING, THEREFORE, NOT IMPLEADED AS RESPONDENT IN THE CAUSE TITLE).

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3232 of 2007

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Dated this the 25th day of October, 2007

O R D E R

The petitioner is the complainant in a prosecution for defamation. The trial has started. The petitioner examined PW2 as a witness on his side. Contrary to expectations, PW2 has allegedly turned hostile. The petitioner was taken by surprise and there was no effective cross examination of PW2 with permission after he exhibited such hostility. Later, the petitioner filed an application to recall PW2 to enable him to cross examine PW2. That petition was resisted, but the learned Magistrate allowed the application on terms. The petitioner was given seven days' time to deposit cost of Rs.2,100/- payable to the accused at the rate of Rs.150/- each. The petitioner in this petition has challenged the award of cost. But after discussions at the Bar he only submits that the petitioner did not get reasonable time to pay the amount.

2. I am not at all satisfied that the discretion exercised to award cost or the quantum of cost awarded is excessive or warrants interference by the invocation of the jurisdiction under Section 482 Cr.P.C. However, I am persuaded to accept the request of the learned

counsel that some further time must be given to the petitioner to make payment of that amount and get PW2 recalled for further examination. The petition can succeed only to that extent. The learned counsel for the petitioner submits that the matter stands posted for S.313 examination only now.

3. There is yet another grievance raised. At a belated stage the petitioner wanted a compact disc to be introduced in evidence. The said prayer was rejected by the learned Magistrate on the ground that it is belated and it is not shown to be relevant.

4. I have heard the learned counsel for the petitioner in detail. I shall carefully avoid any expression of opinion on merits about the acceptability of the grievance raised by him. Suffice it to say that I am not at all persuaded to agree that there is any warrant for invocation of the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. to interfere with that order.

5. Law frowns upon challenge of interlocutory orders passed during pendency of the trial. This policy of law is clearly reflected in Section 397 (2) Cr.P.C., which proscribes revisional challenge against interlocutory orders. Ordinarily and normally the aggrieved person must wait for

conclusion of the proceedings to challenge the interlocutory order along with the order passed at the conclusion of the trial.

6. Having rendered my anxious consideration to the impugned order and the nature of challenge raised against it, I am satisfied that this is not a fit case where the extra ordinary inherent jurisdiction can or ought to be invoked against the impugned order. I may hasten to observe that rejection of the said prayer by me now will not in any way fetter the rights of the petitioner to challenge that order, if necessary, at later stages before the Appellate Court.

7. This Crl.M.C. is allowed in part. The petitioner shall now have time till 5.11.2007 to make the payment of cost. If such amount is paid on or before 5.11.2007, the same shall be reckoned by the learned Magistrate as sufficient compliance of the order dt. 17.9.2007.

8. Issue copy of the order to the learned counsel for the petitioner, who shall forthwith produce the same before the learned Magistrate.

(R. BASANT)
Judge

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